

House Bill 2693

Sponsored by Representative GOMBERG (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates crime of encouraging sexual assault of an animal. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Enhances penalty for crime of sexual assault of an animal. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both. Increases length of time person convicted of sexual assault of an animal is prohibited from possessing certain animals.

A BILL FOR AN ACT

1
2 Relating to sexual assault of animals; creating new provisions; and amending ORS 167.332 and
3 167.333.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 167.310 to**
6 **167.351.**

7 **SECTION 2. (1) A person commits the crime of encouraging sexual assault of an animal**
8 **if the person:**

9 (a) **Knowingly possesses or controls, for the purpose of arousing or satisfying the sexual**
10 **desires of the person or another person, a visual recording of a person engaged in sexual**
11 **conduct with an animal; and**

12 (b) **Knows or is aware of and consciously disregards the fact that the creation of the**
13 **visual recording involved the sexual assault of an animal as described in ORS 167.333.**

14 (2) **Encouraging sexual assault of an animal is a Class A misdemeanor.**

15 (3) **As used in this section:**

16 (a) **"Sexual conduct" means touching or contacting the mouth, anus or sex organs of an**
17 **animal or animal carcass, or causing an animal or animal carcass to touch or contact the**
18 **mouth, anus or sex organs of a person, for the purpose of arousing or gratifying the sexual**
19 **desire of a person.**

20 (b) **"Visual recording" includes, but is not limited to, photographs, films, videotapes and**
21 **computer and other digital pictures, regardless of the manner in which the recording is**
22 **stored.**

23 **SECTION 3. ORS 167.333 is amended to read:**

24 167.333. (1) A person commits the crime of sexual assault of an animal if the person:

25 (a) Touches or contacts, or causes an object or another person to touch or contact, the mouth,
26 anus or sex organs of an animal or animal carcass for the purpose of arousing or gratifying the
27 sexual desire of a person; or

28 (b) Causes an animal or animal carcass to touch or contact the mouth, anus or sex organs of a
29 person for the purpose of arousing or gratifying the sexual desire of a person.

30 (2) Subsection (1) of this section does not apply to the use of products derived from animals.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

(3) Sexual assault of an animal is a Class [A *misdemeanor*] **C felony**.

SECTION 4. ORS 167.332 is amended to read:

167.332. (1) Except as provided in subsections (3) and (4) of this section:

(a) In addition to any other penalty imposed by law, a person convicted of violating ORS 167.315, 167.325, 167.330, [167.333,] 167.340 or 167.355 or of a misdemeanor under ORS 167.320, may not possess a domestic animal or any animal of the same genus against which the crime was committed for a period of five years following entry of the conviction.

(b) In addition to any other penalty imposed by law, a person convicted of violating ORS 167.322, **167.333**, 167.365 or 167.428 or of a felony under ORS 167.320, may not possess a domestic animal or any animal of the same genus against which the crime was committed for a period of 15 years following entry of the conviction.

(2) A person who possesses an animal in violation of this section commits a Class C misdemeanor. When a person is convicted of possessing an animal in violation of this section, as part of the sentence the court may order the removal of that animal from the person's residence and may prohibit the person from possessing any animal of the same genus that the person unlawfully possessed under this section or against which the underlying violation of ORS 167.315, 167.320, 167.322, 167.325, 167.330, 167.333, 167.340, 167.355, 167.365 or 167.428 was committed.

(3) The animal possession prohibition described in subsection (1) of this section does not apply to a person's first conviction if the person is the owner of a commercial livestock operation and the underlying violation of ORS 167.315, 167.320, 167.322, 167.325, 167.330, 167.333, 167.340, 167.355, 167.365 or 167.428 was committed against livestock.

(4)(a) A person subject to an animal possession prohibition described in subsection (1) of this section may file a motion with the sentencing court requesting a waiver of the prohibition. The person must file a sworn affidavit in support of the motion stating that:

(A) The person's conviction leading to the possession prohibition involved only livestock;

(B) During the two years before the conviction triggering the prohibition, the person was the owner of a commercial livestock operation;

(C) The person has not been convicted, in the previous five years, of a crime involving animals or domestic violence or a crime where the victim was under 18 years of age; and

(D) The person's conviction was the result of:

(i) Criminal liability for the conduct of another person under ORS 161.155 (2)(c);

(ii) Criminal liability of a corporation as described in ORS 161.170, and the person is a corporation; or

(iii) Animal neglect as described in ORS 167.325 or 167.330 and the person's criminal conduct was not knowing or intentional.

(b) When a person files a motion and affidavit described in paragraph (a) of this subsection, the sentencing court shall hold a hearing. At the hearing, the sentencing court shall grant the motion if the person proves by clear and convincing evidence that:

(A) Continued enforcement of the prohibition against possessing livestock would result in substantial economic hardship that cannot otherwise be mitigated;

(B) The person no longer poses any risk to animals; and

(C) The person is capable of providing and willing to provide necessary, adequate and appropriate levels of care for all livestock that would come within the person's custody or control if the petition is granted.

(c) When deciding a motion filed under this subsection, the sentencing court may consider the

1 person's financial circumstances and mental health in determining whether the person is capable of
2 adequately caring for livestock.

3 (d) If the sentencing court grants the motion described in this subsection, the waiver of the
4 prohibition against possessing animals shall apply only to livestock. The sentencing court shall fur-
5 ther order that for five years the person must consent to reasonable inspections by law enforcement
6 and the United States Department of Agriculture to ensure the welfare of the livestock under the
7 person's custody or control. A refusal to consent to a reasonable inspection described in this para-
8 graph is contempt of court and, if the person is found in contempt, shall result in the sentencing
9 court revoking the waiver of the possession prohibition.

10 (e) As used in this subsection, "commercial livestock operation" means a business engaged in
11 the raising, breeding or selling of livestock for profit.

12 **SECTION 5. Section 2 of this 2015 Act and the amendments to ORS 167.332 and 167.333**
13 **by sections 3 and 4 of this 2015 Act apply to conduct occurring on or after the effective date**
14 **of this 2015 Act.**

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